



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MAR 25 2011

RE: MUR 6314
Gregory Brown
Gregory Brown for Congress and
Carol Bausinger, in her official
capacity as Treasurer

Dear Mr. Carter:

On June 22, 2010, the Federal Election Commission ("Commission") notified your clients, Gregory Brown and Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was provided to your clients at that time.

On November 4, 2010, the Commission notified you that in the normal course of carrying out its supervisory responsibilities it ascertained information suggesting that Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated the Act, and the matter was forwarded to the Office of General Counsel for possible enforcement action. The Commission also provided you with a copy of the referral at that time.

On March 17, 2011, after reviewing the complaint, the referral, and your clients' responses, the Commission found reason to believe that Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a), 434(a), and 434(b), and 11 C.F.R. § 104.12, provisions of the Act and Commission regulations. At that same time, the Commission also found there is no reason to believe that Gregory Brown violated 2 U.S.C. § 434(a). Enclosed is the Factual and Legal Analysis setting forth the basis for the Commission's determination.

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We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

We look forward to your response. If you have any questions, please contact Margaret Ritzert, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530,

On behalf of the Commission,


Cynthia L. Benenly
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gregory Brown for Congress and MUR: 6314
Carol Bausinger, in her official
capacity as treasurer
Gregory Brown

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2), and by a complaint filed with the Commission by Melanie Sloan and Citizens for Responsibility and Ethics in Washington.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Gregory Brown was a candidate in the June 8, 2010, South Carolina primary election, seeking the Democratic nomination to represent the state's Sixth Congressional District in the U.S. House of Representatives. On February 1, 2010, Mr. Brown filed a Statement of Candidacy with the Commission that designated Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, ("Committee") as his principal campaign committee. The Committee filed its Statement of Organization on April 26, 2010.

The Committee has filed the following disclosure reports with the Commission:

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Table 1. Reports Filed with the Commission

Date	Report
6/10/10	April Quarterly Report
6/10/10	July Quarterly Report
6/11/10	July Quarterly Report (Amended)
6/20/10	April Quarterly Report (Amended)
6/20/10	July Quarterly Report (Amended)
7/28/10	Termination Report
11/7/10	Termination Report
1/4/11	Termination Report
2/9/11	Termination Report

The Committee attempted to terminate after Mr. Brown lost the primary election, but the Reports Analysis Division ("RAD") informed the Committee that it needed to resolve outstanding discrepancies in its reports before it could terminate.

1. MUR 6314

Complainant alleges that Respondents knowingly and willfully violated 2 U.S.C. § 434(a)(2)(A)(i), (iii) and 11 C.F.R. § 104.5(a)(1)(i), (2)(i) by failing to file both the 2010 April Quarterly and 12-Day Pre-Primary Reports.

Respondents admit that the disclosure reports were untimely. Respondents maintain that any delays in filing the required reports were "not the result of any intentional or willful misconduct," and they have filed all required reports. *See Response*. Without providing any specific information, Respondents claim that they mistakenly relied on information provided by the state political party. They also claim, again without providing any specific information, to have relied on information the Commission provided to them regarding filing requirements.¹ Respondents further claim that they relocated their campaign headquarters, which resulted in lost mail and "temporary loss of full communication." *Id.*

¹ There is no record of the Committee contacting RAD until July 27, 2010, after it had filed the Amended 2010 April and July Quarterly Reports.

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2. RR 10L-09

On July 1, 2010, RAD sent the Committee two Requests for Additional Information ("RFAI's") regarding the 2010 April and July Quarterly Reports, respectively. The Committee has not yet filed a response to these RFAI's; however, the Committee's treasurer contacted a RAD Analyst on July 27, 2010, to inquire about the process for terminating. Between September 3, 2010, and September 28, 2010, RAD Analysts made several attempts to contact the Committee to notify them of potential Commission action. However, as the Committee's phone numbers and e-mail addresses were no longer in service, RAD left a message at Mr. Brown's business, Keystone Enterprises, which was not returned.

On October 18, 2010, RAD referred the Committee to the Office of General Counsel for the following reporting violations:

- Failing to correct an initial cash balance of \$10,000 on its 2010 April Quarterly Report, the first disclosure report filed with the Commission. Both the original and Amended April Quarterly Reports reflect this balance, and neither includes a supporting schedule disclosing the source of this initial balance.
- Failing to correct a negative ending cash-on-hand balance on its April 2010 Quarterly Report. The April Quarterly Report filed on June 10, 2010, discloses a negative ending cash-on-hand balance of \$35,164.66; the amended report, filed ten days later, discloses a negative ending cash-on-hand balance of \$54,118.45.
- Failing to correct a cash-on-hand balance discrepancy between two consecutive reports: while the Amended 2010 April Quarterly Report discloses a negative ending cash-on-hand balance of \$54,118.45, the 2010 July Quarterly Report discloses a beginning cash-on-hand balance of \$0.00. The Amended 2010 July Quarterly Reports also disclose a \$0.00 beginning cash-on-hand balance.

On December 16, 2010, the Committee responded to the notification of the referral by contending that the candidate deposited the original funds in the campaign account, and thereafter the campaign ran a negative balance to be paid by the candidate himself. The

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1 Committee acknowledges that there may have been accounting defects, but asserts that there was
2 no inappropriate use of funds.

3 **B. Legal Analysis**

4 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), an individual
5 becomes a candidate for federal office when his or her campaign exceeds \$5,000 in contributions
6 or expenditures. 2 U.S.C. § 431(2). Based on its Amended 2010 April Quarterly Report, it
7 appears that the Committee exceeded the \$5,000 threshold on February 2, 2010, when it made a
8 \$10,000 disbursement to Steven Foaake & Associates for a "campaign questionnaire."²
9 Accordingly, Mr. Brown was a candidate for federal office on February 2, 2010, which was the
10 day after the Commission received Mr. Brown's Statement of Candidacy.

11 **1. MUR 6314: Timeliness of Disclosure Reports**

12 Political committee treasurers are required to file reports of receipts and disbursements in
13 accordance with 2 U.S.C. § 434(a). A principal campaign committee of a candidate for the U.S.
14 House of Representatives, in any calendar year during which there is a regularly scheduled
15 election for which its candidate is seeking election, shall file quarterly reports no later than the
16 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(2)(A)(iii). Furthermore,
17 such committee shall file a pre-election report no later than the 12th day before any election in
18 which such candidate is seeking election. 2 U.S.C. § 434(a)(2)(A)(i).

19 The Committee was required to file the 2010 April Quarterly Report by April 15, 2010.
20 However, the Committee actually filed this report, which disclosed \$400 in receipts and
21 \$45,564.65 in disbursements (later amended to \$64,518.45 in disbursements), on June 10, 2010 –

² Although the Amended 2010 April Quarterly Report discloses the \$10,000 disbursement on February 2, 2010, it discloses only \$400 in contributions for the entire reporting period, in addition to the initial \$10,000 cash balance. It is possible that the Committee may have exceeded the \$5,000 contribution threshold before February 2, 2010, through an undisclosed transaction, but there is no information to indicate the nature or amount of this potential undisclosed transaction.

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56 days late. Similarly, the Committee was also required to file a report no later than twelve days before the June 8, 2010, primary in which Mr. Brown was a candidate. This report, due May 27, 2010, should have covered the period from April 1, 2010, to May 19, 2010. To date, the Committee has not filed this report; however, the same period of activity was eventually covered by the 2010 July Quarterly Report, which disclosed \$300 in receipts (later amended to \$24,300) and \$20,504.72 in disbursements (later amended to \$39,366.89) that should have been disclosed on the pre-primary report.

Although the Committee failed to timely file the 2010 April Quarterly Report and failed to file the 2010 12-Day Pre-Primary Report, there is no information to indicate either that these violations were knowing and willful, or that the candidate, Mr. Brown, was personally liable for the Committee's failure to file timely disclosure reports. Accordingly, the Commission finds reason to believe that Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i) and (iii). The Commission also finds no reason to believe that Gregory Brown violated 2 U.S.C. § 434(a)(2)(A)(i) and (iii).

2. RR 10L-09: Content of Disclosure Reports

The Act requires political committees to report the amount of cash-on-hand at the beginning of the reporting period, as well as identify each person who makes aggregate contributions in excess of \$200 in an election cycle. 2 U.S.C. § 434(b)(1), (3). Commission regulations further clarify that committees which have cash-on-hand at the time of their registration shall disclose the sources of such funds on their first report. 11 C.F.R. § 104.12. Based on the information provided in the referral, the response, and the Committee's disclosure reports, it appears that Mr. Brown initially made a personal \$10,000 contribution to the Committee, which the Committee disclosed as an initial cash balance on its first report.

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1 However, by failing to disclose Mr. Brown as the source of its initial \$10,000 cash balance, the
2 Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.12.

3 The Act also requires that reports disclose the amount and nature of outstanding debts
4 and obligations owed by the political committee. 2 U.S.C. § 434(b)(8). Based on the referral,
5 the response, and disclosure reports, it appears that the Committee incurred \$54,118.45 in debt
6 and reported it as a negative cash balance instead of as a debt or obligation. By failing to
7 disclose this \$54,118.45 as debt, the Committee violated 2 U.S.C. § 434(b)(8).

8 Finally, the discrepancy between the ending cash-on-hand balance on the Amended 2010
9 April Quarterly Report (-\$54,118.45) and the beginning cash-on-hand balance on the 2010 July
10 Quarterly Report (\$0.00) could indicate that the Committee failed to disclose all contributions,
11 offsets, and operating expenditures in violation of 2 U.S.C. § 434(b)(7). However, it appears that
12 this discrepancy is attributable to the misreported debt discussed above: if the Committee had
13 reported \$54,118.45 as debt on its Amended 2010 April Quarterly Report, its ending cash-on-
14 hand balance would be \$0.00, which would match the beginning cash-on-hand balance reported
15 in the 2010 July Quarterly Report. Thus, the discrepancy does not appear to be a separate
16 violation of 2 U.S.C. § 434(b)(7). Accordingly, the Commission finds reason to believe that
17 Gregory Brown for Congress and Carol Bausinger, in her official capacity as treasurer, violated
18 2 U.S.C. § 434(b)(1), (3), and (8) and 11 C.F.R. § 104.12.

19 **3. Late Statement of Organization**

20 Based on the information in its disclosure reports, the Committee appears to have filed its
21 Statement of Organization late. A candidate's authorized principal campaign committee is
22 required to file a Statement of Organization within ten days of designation. 2 U.S.C. § 433(a).
23 Mr. Brown designated the Committee as his principal campaign committee on February 1, 2010;
24 therefore, the Committee should have filed its Statement of Organization by February 11, 2010.

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- 1 Instead, the Committee filed its Statement of Organization on April 26, 2010 – 74 days late.**
- 2 Accordingly, the Commission finds reason to believe that Gregory Brown for Congress and**
- 3 Carol Bausinger, in her official capacity as treasurer, violated 2 U.S.C. § 433(a).**

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